399.

SUPREME COURT OF THE UNITED STATES.

No. ~~70.~~ 36.

GEORGE DENEALE'S EXECUTRIX, ET AL., PLAINTIFFS I ERROR,

VERSUS

JOHN STUMP'S EXECUTORS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF ALEXANDRIA, D. C.

INDEX.

	Original.	Print
Writ of error	1a	2
Citation	2a	2
Scire facias	1	3
Marshal's return	5	5
Alias scire facias	6	6
Marshal's return	10	8
Office judgment	10	8
Office judgment set aside as to Mary and Nancy P. Deneale	11	8
Demurrer to scire facias	11	9
No such record pleaded	11	9
Act of limitations pleaded	12	9
Rule security for costs	12	9
Joinder in demurrer to scire facias	12	9
Replication to the plea of no such record	13	9
Replication to the plea of the act of limitations	13	10
Issue joined to replication to first plea	14	10
Demurrer to replication to second plea	14	10
Security for costs given	14	10
Demurrer to replication to second plea withdrawn, and special rejoinder	15	10
Rule sune joinder	15	11
Replication to the plea of limitations withdrawn, and new replication filed	16	11
Demurrer to the replications to the plea of limitations	17	12
Judgment	18	12
Clerk's certificate	19	12

UNITED STATES OF AMERICA, *District of Columbia, to wit:*

The President of the United States of America to the Judges of the United States' Circuit Court of the District of Columbia, greeting:

Because in the record and proceedings, and also the rendering of the judgment of a plea which is in the said court for the county of Alexandria, before you, or some of you, between John Archer and John W. Stump, executors of John Stump, deceased, plaintiffs, and Mary Deneale, executrix of George Deneale and others, defendants, manifest error hath happened, to the great damage of the said Mary Deneale and others, as by their complaint appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, being the present seat of the National Government, on the second Monday in January next, that the record and proceedings aforesaid, being seen and inspected, the said Supreme Court may cause further to be done therein, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the United States, this tenth day of December, eighteen hundred and thirty-one.

EDM. I. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit:*

To John Archer and John W. Stump, executors of John Stump, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, being the present seat of the National Government, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the United States' circuit court of the District of Columbia, for the county of Alexandria, wherein Mary Deneale and others are plaintiffs, and you are defendants, to show cause, if any there be, why the judgment rendered against the said Mary Deneale and others, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable John Marshall, Chief Justice of the United States, this tenth day of December, 1831.

W. CRANCH.

DISTRICT OF COLUMBIA, *County of Alexandria, set:*

Charles Scott personally appeared before me, a justice of the peace, and made oath that he delivered a true copy of the within

401.

citation to Thomas W. Hewitt, attorney, for John Archer and John W. Stump, executors of John Stump, deceased. Given under my hand, this 10th day of January, 1832.

ADAM LYNN.

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States Circuit Court of the District of Columbia for the county of Alexandria, the second day of December, A. D. 1831.

JOHN ARCHER and JOHN W. STUMP, executors of John Stump, deceased, *plaintiffs,*

against

MARY DENEALE, CHARLES T. STUART, and ANN LUCRETIA his wife, WILLIAM D. CARNES, and MARY CATHARINE his wife, and NANCY P. DENEALE, *defendants.*

Be it remembered, that, heretofore, to wit, on the 11th day of April, in the year 1828, came the plaintiffs aforesaid by Thomas W. Hewitt, esq., their attorney, and sued out of the office of the said court a writ of scire facias against the said defendants, which is in the words and figures following:

DISTRICT OF COLUMBIA, *sct:*

[L. S.] *The United States of America to the Marshal of the District of Columbia, greeting:* Ci. facias.

Whereas, John Archer and John W. Stump, executors of John Stump, deceased, on the 19th day of December, 1817, by judgment of our circuit court of the District of Columbia for the county of Alexandria, recovered against George Deneale in his life time, the sum of nineteen hundred and eighty-eight dollars and fifty-eight cents, with interest thereon from the 18th day of February, 1806, till paid, and twelve dollars and fifty-eight cents; also, two thousand and thirty-two dollars and thirty cents, with interest thereon from the 19th of August, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, three thousand nine hundred and thirty-six dollars and seventy cents, with interest thereon from the 19th of March, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, their costs in that behalf expended, amounting to five dollars, which said judgment was to have credit for two hundred dollars paid 23d of April, 1807; two thousand dollars paid 26th October, 1809; one thousand dollars paid 22d December, 1810; one thousand dollars paid 11th August, 1811; and for one thousand five hundred dollars paid 19th September, 1812, as by the record of the said suit in our said court now remaining will appear. And whereas, the said George Deneale, afterwards, that is to say, on the 29th day of June, 1818, at the county aforesaid, departed this life, no execution having been issued on the said judgment, having by his last will and testament devised all his lands and tenements to Mary Deneale, his widow, and Ann Lucretia Deneale, Mary Catharine Deneale, Wil-

liam W. Deneale, Nancy Paten Deneale, Juliet Deneale, and Albert Deneale, his children and heirs at law, who, under the said devise, entered, and were thereof seized. And whereas, since the death of the said George, the said John Archer and John W. Stump, executors as aforesaid, sued out of the said court the United States' writ of scire facias against the said Mary, as executrix of the said George, commanding the marshal of the said district to make known to the said Mary Deneale, executrix as aforesaid, that she be and appear at the then next court, to show cause why the said John Archer and John W. Stump, executors as aforesaid, should not have their execution against the goods and chattels of the said George Deneale, in the hands of his administratrix, to be administered according to the form and effect of the judgment aforesaid, and further to do and receive what the court should consider.

On which said writ, such proceedings were had, that, afterwards, that is to say, on the 9th day of December, 1819, at the county aforesaid, it was by the said court in the said suit considered, that the plaintiffs recover against the defendant the sum of nineteen hundred and eighty-eight dollars and fifty-eight cents, with interest thereon from the 18th of February, 1806, till paid, and twelve dollars and fifty eight cents; also, two thousand and thirty-two dollars and thirty cents, with interest from the 19th of August, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, three thousand nine hundred and thirty-six dollars and seventy cents, with interest from the 19th of March, 1806, till paid, and twelve dollars and fifty eight cents; and, also, six dollars and fifty-four cents, and costs of suit amounting to three dollars and forty-six cents, to be levied of the goods and chattels of the said testator in the hands of the said defendant to be administered. The above judgment to have credit for $200, paid 23d of April, 1807; $200C, paid 26th October, 1809; $1000, paid 22d December, 1810; $1000, paid 11th August, 1811; and $1500, paid 19th September, 1812. And afterwards, that is to say, on the 10th day of January, 1820, the said John Archer and John W. Stump, executors as aforesaid, sued out of the office of the said court on said judgment, the United States' writ of fieri facias to the said marshal directed, whereby he was commanded, that, of the goods and chattels which were of George Deneale at the time of his death, in the hands of Mary Deneale, his executrix, he cause to be made the aforesaid several sums of money in the judgment above mentioned, to be levied of the goods and chattels of the said George Deneale in the hands of his executrix to be administered, if so much thereof she had in her hands; if not, then the costs were to have been levied of the goods and chattels of the said executrix; which execution was subject to the credits above stated. Which writ of fieri facias having been delivered to the marshal to be executed, he made return thereon: "No property found to levy this execution upon."

And afterwards, that is to say, on the 6th day of October, 1826, at the county aforesaid, the said John Archer and John W. Stump, executors as aforesaid, sued out of the office of the said court a

certain other United States' writ of fieri facias, on the judgment last mentioned to the said marshal directed, whereby he was commanded, that, of the goods and chattels which were of George Deneale at the time of his death, in the hands of Mary Deneale, his executrix, to be administered, he cause to be made the aforesaid several sums of money in the judgment last mentioned, to be levied of the goods and chattels of the said George Deneale, in the hands; of his said executrix, if so much thereof she had in her hands, if not, then the costs to be levied of the goods and chattels of the said executrix, subject to the credits as aforesaid. On which said writ, the marshal made return: "No property found to levy this execution upon; costs made, and paid over to the attorney,"—as by the record of the said last mentioned suit, in the said court now remaining, will more fully appear.

And whereas, since the death of the said George, the said William W. Deneale, Juliet Deneale, and Albert Deneale, have departed this life intestate and without issue, whereby their right and title to the lands and tenements so to them by the said George devised, descended to the said Ann Lucretia, Mary Catharine, and Nancy P. Deneale, their sisters and heirs at law, children of the said George. And whereas the said Ann Lucretia has since intermarried with Charles T. Stuart, and the said Mary Catharine has since intermarried with William D. Carnes, and no part of the said judgment has yet been paid; and whereas John Archer and John W. Stump, executors of the said John Stump, deceased, according to the statute in that case provided, have chosen to be delivered to them for the debt and interest as aforesaid, all the chattels, and a moiety of the land whereof the said George *died seized*, to be holden according to the statute aforesaid; we, therefore, command you, that you give notice to Mary Deneale, Charles T. Stuart, and Ann Lucretia his wife, Willlam D. Carnes, and Mary Catharine his wife, and Nancy Patten Deneale, that they be and appear in our said circuit court to be holden for the county of Alexandria, on the second Monday of this present month of April, to show cause, if they have, or know any thing to say for themselves, why a moiety of the lands they hold as aforesaid ought not to be delivered to the said executors for the said debt and judgment aforesaid, according to the form of the statute aforesaid; and have then there this writ, and the names of those by whom you have executed the same. Witness, the honorable William Cranch, Chief Judge of the said court, this 11th day of April, 1828.

EDM. I. LEE, *C. C.*

Upon which writ, the marshal made the following return: "*Not found.*"

C. SCOTT, *D. M,*
for T. Ringgold, Marshal.

At another day, to wit, at the rules held in the clerk's office of the said court for the month of May in the same year, the marshal having made return that the defendants are not found; on the motion of the plaintiffs, by their attorney, an *alias scire facias* is

awarded against the said defendants, returnable at the next court, which is in the words and figures following:

DISTRICT OF COLUMBIA, *sct.*

[L. S.] *The United States of America to the Marshal of the District of Columbia, greeting:*

Whereas, John Archer and John W. Stump, executors of John Stump, deceased, on the 19th day of December, 1817, by judgment of our circuit court of the District of Columbia for the county of Alexandria, recovered against George Deneale, in his life time, the sum of nineteen hundred and eighty-eight dollars and fifty-eight cents, with interest thereon from the 18th day of February, 1806, till paid, and twelve dollars and fifty eight cents; also, two thousand and thirty two dollars and thirty cents, with interest thereon from the 19th of August, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, three thousand nine hundred and thirty-six dollars and seventy cents, with interest thereon from the 19th of March, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, their costs in that behalf expended, amounting to five dollars. Which said judgment was to have credit for two hundred dollars paid 23d of April, 1807; two thousand dollars paid 26th October, 1809; one thousand dollars paid 23d December, 1810; one thousand dollars paid 11th August, 1811; and for one thousand five hundred dollars paid 19th September, 1812, as by the record of the said suit in our said court now remaining will appear. And whereas, the said George Deneale afterwards, that is to say, on the 29th day of June, 1818, at the county aforesaid, departed this life, no execution having been issued on the said judgment, having by his last will and testament devised all his lands and tenements to Mary Deneale his widow, and Ann Lucretia Deneale, Mary Catharine Deneale, William W. Deneale, Nancy Paten Deneale, and Albert Deneale, his children and heirs at law, who, under the said devise, entered, and were thereof seized. And whereas, since the death of the said George, the said John Archer and John W. Stump, executors as aforesaid, sued out of the said court the United States' writ of scire facias against the said Mary, as executrix of the said George, commanding the marshal of the said district to make known to the said Mary Deneale, executrix as aforesaid, that she be and appear at the then next court to show cause why the said John Archer and John Stump, executors as aforesaid, should not have their execution against the goods and chattels of the said George Deneale, in the hands of his administratrix, to be administered according to the form and effect of the judgment aforesaid, and further to do and receive what the court should consider.

On which said writ, such proceedings were had, that, afterwards, that is to say, on the 9th day of December, 1819, at the county aforesaid, it was by the said court in said suit considered, that the plaintiffs recover against the defendant the sum of nineteen hundred and eighty-eight dollars and fifty-eight cents, with interest

thereon from the 18th of February, 1806, till paid, and twelve dollars and fifty-eight cents; also, two thousand and thirty-two dollars and thirty cents, with interest from the 19th of August, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, three thousand nine hundred and thirty-six dollars and seventy cents, with interest from the 19th of March, 1806, till paid, and twelve dollars and fifty-eight cents; and, also, six dollars and fifty-four cents, and costs of suit amounting to three dollars and forty-six cents, to be levied of the goods and chattels of the said testator in the hands of the said defendant to be administered. The above judgment to have credit for $200, paid 23d of April, 1807; $2000, paid 26th October, 1809; $1000 paid 22d December, 1810; $1000, paid 11th August, 1811; and $1500, paid 19th September, 1812.

And afterwards, that is to say, on the 10th day of January, 1820, the said John Archer and John W. Stump, executors as aforesaid, sued out of the office of the said court on said judgment, the United States' writ of fieri facias to the said marshal directed, whereby he was commanded, that, of the goods and chattels which were of George Deneale at the time of his death, in the hands of Mary Deneale, his executrix, he cause to be made the aforesaid several sums of money in the judgment above mentioned, to be levied of the goods and chattels of the said George Deneale in the hands of his executrix to be administered, if so much thereof she had in her hands; if not, then the costs were to have been levied of the goods and chattels of the said executrix; which execution was subject to the credits above stated. Which writ of fieri facias having been delivered to the marshal to be executed, he made return thereon: "No property found to levy this execution upon."

And afterwards, that is to say, on the 6th day of October, 1826, at the county aforesaid, the said John Archer and John W. Stump, executors as aforesaid, sued out of the office of the said court, a certain other writ of fieri facias on the judgment last mentioned to the said marshal directed, whereby he was commanded, that, of the goods and chattels which were of George Deneale at the time of his death, in the hands of Mary Deneale, his executrix, to be administered, he cause to be made the aforesaid several sums of money as in the judgment last mentioned, to be levied of the goods and chattels of the said George Deneale, in the hands of his said executrix, if so much thereof she had in her hands; if not, then the cost to be levied of the goods and chattels of the said executrix, subject to the credits as aforesaid. On which said writ, the marshal made return: "no property found to levy this execution upon; costs made and paid over to the attorney;"—as by the record in the said last mentioned suit, in the said suit now remaining, will more fully appear.

And whereas, since the death of the said George, the said William W. Deneale, Juliet Deneale, and Albert Deneale, have departed this life intestate and without issue, whereby their right and title to the lands and tenements so to them by the said George devised, descended to the said Ann Lucretia, Mary Catharine, and Nancy P. Deneale, their sisters and heirs at law, children of the said George; and whereas the said Ann Lucretia has since

intermarried with Charles T. Stuart, and the said Mary Catharine has since intermarried with William D. Carnes, and no part of the said judgment has yet been paid; and whereas, John Archer and John W. Stump, executors of the said John Stump, deceased, according to the statute in that case provided, have chosen to be delivered to them for the said debt and interest as aforesaid, all the chattels, and a moiety of the land whereof the said George *died seized*, to be holden according to the statute aforesaid; we, therefore, command you, as heretofore, that you give notice to Mary Deneale, Charles T. Stuart, and Ann Lucretia his wife, William D. Carnes, and Mary Catharine his wife, and Nancy Patten Deneale, that they be and appear in the said circuit court to be holden for the county of Alexandria, on the second Monday of this present month of April, to show cause, if they have, or know any thing to say for themselves, why a moiety of the lands they hold as aforesaid ought not to be delivered to the said executors for the said debt and judgment aforesaid, according to the form of the statute aforesaid; and have then there this writ, and the names of those by whom you have executed the same. Witness, the honorable William Cranch, Chief Judge of the said court, this 17th day of May, 1828.

EDM. I. LEE, *C. C.*

Upon which writ, the marshal made the following return:

Marshal's return on als. sci. fa.

"Executed on Mary Deneale, executrix of George Deneale, deceased, and Nancy Patten Deneale; the other defendants not found, and no inhabitants."

C. SCOTT, *D. M.*
for T. Ringgold, Marshal.

Office judgment.

And at another day, to wit, at the rules held in the clerk's office of the said court, for the month of March, 1829, came to the plaintiffs aforesaid by their attorney, and the defendants Mary Deneale and Nancy P. Deneale, having been duly summoned, and not appearing, and the marshal having returned two nihils as to the other defendants, it is ordered that exe cution of the debt in the said scire facias mentioned, of all the chattels, and a moiety of the land whereof the said George Deneale died seized, to be holden according to the statute in such case made and provided, and their costs by them about their suit in this behalf expended; and the said defendants in mercy, &c. But this judgment is entitled to the credits mentioned in the the scieri facias aforesaid.

Office judgment set aside as to Mary and Nancy P. Deneale.

At another day, to wit, at a court continued and held for the District and county aforesaid, the ninth day of May, 1829, on the motion of the defendants, Mary Deneale and Nancy P. Deneale, the judgment obtained in the office is set aside as to them; and the said Mary Deneale and Nancy P. Deneale come and defend the force and injury, &c., and say that the plaintiffs ought not to have or maintain their said execution against them, because they say that the said scire facias, and the matters in the same contained, are not sufficient in law for them to have or maintain their execution against them of the lands and tenements of which the said George Deneale died seized, and that they have no necessity, nor

are they bound by the law of the land in any manner to answer the same, and this they are ready to verify. Wherefore, for want of a sufficient scire facias in this behalf, they, the said Mary and Nancy P. Deneale, pray judgment that the said executors may be barred from having or maintaining their execution against them, &c. Demurrer to sci. fa.

And the said Mary and Nancy P. Deneale come and defend the wrong and injury, &c., and say that the said plaintiffs ought not to have or maintain their execution against them, because they say that there is not any such record of proceedings and recovery against the said George and the said Mary, at the suit of the said plaintiffs, in manner and form as the said plaintiffs have declared against them, and this they are ready to verify, &c. Wherefore they pray judgment, if the said executors ought to have or maintain, &c. No such record pleaded.

And the said Mary and Nancy P. Deneale come and defend the wrong and injury, &c., and for further plea in this behalf, say that the plaintiffs ought not to have or maintain their said execution against them, because they say that the judgment recited in the said scire facias was rendered more than ten years next prior to the day of the date of the said scire facias, and this they are ready to verify. Wherefore they pray judgment, &c. Act of limitations pleaded.

And it appearing to the satisfaction of the court, that the plaintiffs are not inhabitants of the District of Columbia, on the motion of the defendants, Mary and Nancy P. Deneale, by their attorney, it is ordered that this suit be dismissed at the next term, unless security for the payment of such costs as may be awarded the said defendants, and also of the fees which shall become due from the plaintiffs to the officers of this court, be given with the clerk within sixty days from this time, and this cause is continued until the next term. Rule security for costs.

And afterwards, to wit, on the 31st day of October, 1829, came the plaintiffs, by their attorney, and filed a joinder to the said defendants' demurrer to scire facias, and a replication to the plea of no such record—and a replication to the plea of the act of limitations; which joinder and replications are in the words following:

And the said John Archer and John W. Stump, executors of John Stump, deceased, say that the said scire facias, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for them, the said John Archer and John W. Stump, executors as aforesaid, to have and maintain their aforesaid execution thereof against them, the said defendants, of the lands and tenements of which the said George Deneale died seized; and this, the said John Archer and John W. Stump, are ready to verify and prove as the court shall direct and award. Wherefore they pray judgment and execution to be adjudged to them, &c. Joinder in dem'r. to sci. facias.

And the said John Archer and John W. Stump, executors as aforesaid, as to the said plea of the said Mary Deneale and Nancy P. Deneale, by them first above pleaded, say that they by reason of any thing by the said Mary and Nancy P. in that plea alleged, ought not to be barred from having or maintaining their aforesaid execution thereof against them, because they say there is such Replication to the plea of no such record.

a record of the said recovery in the Circuit Court of the United States, held for the county of Alexandria, as they, the said John Archer and John W. Stump, executors as aforesaid, have above in their said scire facias alleged; and this they are ready to verify by the said record, when, where, and in such manner as the court here shall direct and award. And they pray that the said record and proceedings may be inspected and seen by the said court here, &c. &c.

(Withdrawn.) Replications to the plea of the act of limitations.

And the said John Archer and John W. Stump, executors as aforesaid, as to the said plea of the said Mary Deneale and Nancy P. Deneale, by them secondly above pleaded, say, that they ought not to be barred from having and maintaining their aforesaid execution thereof against them, the said Mary Deneale and Nancy P. Deneale, of the lands and tenements of which the said George Deneale died seized, by reason of any thing by the said Mary and Nancy P. in that plea alleged; because they say that, on the 19th day of December, 1817, the time of awarding the aforesaid judgment, they, the said John Archer and John W. Stump, executors as aforesaid, were not within the District of Columbia; and this the said John Archer and John W. Stump, executors as aforesaid, are ready to verify. Wherefore they pray judgment, and their execution, &c. &c.

Issued jd. to rep. 1st plea.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 5th day of November, 1829, came the parties aforesaid by their attorneys, and issue is joined upon the plaintiffs' replication to the defendants' first plea. And the said defendants' Mary Deneale and Nancy P. Deneale, devisees of George Deneale, by Thomson F. Mason, their attorney, come, and say that the replication as aforesaid, and the matter therein contained, are not sufficient in law to enable the said plaintiffs to maintain their aforesaid scire facias against them, which replication made in form aforesaid, they, the said Mary Deneale and Nancy P. Deneale, have no occasion, nor by the law of the land are they obliged in any wise to answer, and this they are ready to verify. Wherefore, for want of a sufficient replication in this behalf, they, the said Mary and Nancy P. Deneale, pray judgment if the said executors ought to have or maintain their scire facias against them, &c.

Dem'r. to rep. 2d plea.

Security for costs given.

And on the day and year last mentioned, Thomas W. Hewitt, of the said county, comes into court, and undertakes for the plaintiffs that they shall satisfy and pay all such costs as may be awarded to the defendants, in case the said plaintiffs shall be cast in this suit; and, also, they, the said plaintiffs, shall satisfy and pay all fees which will become due from them to the officers of this court, or that he, the said Thomas W. Hewitt, will satisfy and pay those costs and fees for them.

Demurrer to rep. to 2d plea withdrawn, and special rejoinder.

At another day, to wit, at a court continued and held for the district and county aforesaid, the 23d day of November, 1829, leave is given to the defendants, Mary Deneale and Nancy P. Deneale, to withdraw their demurrer to the plaintiffs' replication to their second plea; and the said Mary Deneale and Nancy P. Deneale, as to the plea of the plaintiffs, by them in reply pleaded

to the second plea of the said defendants in bar to the said execution of the said plaintiffs, say that the said plaintiffs ought not, by reason of any thing in their said plea so pleaded in reply contained, to have or maintain their said execution against them; because they say that the plaintiffs, after the said 19th day of December, 1817, the time of awarding the judgment aforesaid, to wit, on the day of came into the said District of Columbia; and the said defendants further say, that the said plaintiffs did not issue their said writ of fieri facias in this cause within five years next after their said coming into the said District of Columbia. And this they are ready to verify, &c.

Rule sune joinder.

At a court continued and held for the District and county aforesaid, the 5th day of December, 1829, came the parties by their attorneys, and a day is thereupon given the plaintiffs to file their sune joinder to the defendants, Mary and Nancy P. Deneale's rejoinder to the plaintiffs' replication to their second plea, to wit, on or before the first day of March next; and the same day is given the said defendants, there, &c.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 8th day of May, 1830, this cause was continued.

And at a court continued and held for the said District and county, the day of in the year 1830, this cause was continued.

Rep. to the plea of limitations withdrawn, and new rep. filed.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 7th day of May, 1831, came the parties aforesaid by their attorneys, and, on the motion of the plaintiffs, leave is given them to withdraw their replication to the defendants' plea of limitation, and the said John Archer and John W. Stump, executors of John Stump, deceased, as to the plea of the said Mary Deneale and Nancy P. Deneale by them secondly above pleaded, say that they ought not to be barred from having and maintaining their aforesaid execution thereof against them of the lands and tenements of which the said George Deneale died seized, by reason of any thing by them, the said Mary and Nancy P., in that plea alleged, because they say that after the death of the said George Deneale, the plaintiffs sued out of the circuit court of the District of Columbia, held for the county of Alexandria, a scire facias against the said Mary Deneale, executrix of the said George Deneale, to show cause, if any she could, why the plaintiffs should not have execution of their judgment aforesaid, of the goods and chattels which were of the said George Deneale, and which came to the hands of the said Mary Deneale to be administered.

On which scire facias, such proceedings were had, that, by the judgment of the court, it was considered that the plaintiffs should have execution of their said judgment, &c., on which said award of execution, accordingly on the 10th day of January, 1820, an execution was, by the plaintiffs, sued out, returnable to the 4th Monday in March, 1820; and on which execution the marshal made the following return: "No property found to levy this execution upon."

And this the said plaintiffs are ready to verify; wherefore they pray judgment, &c.

Demurrer to the replication to the plea of the act of limitations.

And at another day, to wit, at a court continued and held for the District and county aforesaid, the 10th day of November, 1831, came the parties aforesaid by their attorneys; and the said defendants, Mary Deneale and Nancy P. Deneale, devisees of George Deneale, by Thomson F. Mason, their attorney, come and say that the replication aforesaid, and the matter therein contained, are not sufficient in law to enable the said plaintiffs to maintain their aforesaid scire facias against them; which replication, made in form aforesaid, they, the said Mary Deneale and Nancy P. Deneale, have no occasion, nor by the law of the land are they obliged in any wise to answer, and this they are ready to verify; whereupon, for want of a sufficient replication in that behalf, they pray judgment if the said plaintiffs ought to have or maintain their scire facias against them, and they set down and show to the court, as causes of demurrer, the following:

1. That the said replication, and the matter therein contained, is no answer to the plea of the act of limitations.

2. That the scire facias against the executrix of George Deneale was, and is no revival of the judgment aforesaid against the defendants, so as to charge them as devisees or heirs.

3. Because the said replication does not state and set forth the date of the scire facias, which, in the said replication, is alleged to have been sued forth against Mary Deneale, executrix of the said George Deneale, after the death of the said George Deneale.

4. Because there is no profert of the scire facias aforesaid, and of the proceedings, and of the judgment thereon.

5. Because the said replication is informal, and insufficient in law.

And now here at this day, to wit, at a court continued and held for the District and county aforesaid, the second day of December, 1831, came the parties aforesaid by their attorneys; and on hearing demurrer to scire facias and to plaintiffs' replication, it is the opinion of the court that the law is for the plaintiffs, and the demurrers of defendants are overruled; and, on inspection of the record produced by the plaintiffs on the trial of the issue joined on the first plea, it is the opinion of the court that there is such a record as is set forth in the said scire facias, and judgment for the plaintiffs on that plea accordingly. And the defendants, Charles T. Stuart, Ann Lucretia his wife, William D. Carnes, and Mary Catharine his wife, not having entered their appearance, the judgments heretofore entered in the office against them are confirmed. Whereupon, it is considered by the court that the plaintiffs have execution as in their said scire facias is prayed.

Plaintiffs' costs $6 42.

Defendants' costs $1 98.

DISTRICT OF COLUMBIA, *to wit:*

I, Edmund I. Lee, Clerk of the United States' Circuit Court of the District of Columbia for the county of Alexandria, do hereby

certify that the foregoing is a true transcript of the record and proceedings in a certain case lately depending in the said court, in which the executors of John Stump, and others, were plaintiffs, and Mary Deneale, and others, defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

In testimony whereof, I hereto set my hand, and annex the seal of said court, this 25th day of February, 1832.

EDM. I. LEE, *C. C.*